



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

INTERIM ORDER

October 27, 2015 Government Records Council Meeting

Klarida Papajani
Complainant

Complaint No. 2015-9

v.

NJ Turnpike Authority
Custodian of Record

At the October 27, 2015 public meeting, the Government Records Council ("Council") considered the October 20, 2014 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that based on the insufficient and conflicting evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. This complaint should also be referred to the Office of Administrative Law for determination of whether the Custodian or any other agency official knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Interim Order Rendered by the
Government Records Council
On The 27th Day of October, 2015

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: October 28, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
October 27, 2015 Council Meeting**

**Klarida Papajani¹
Complainant**

GRC Complaint No. 2015-9

v.

**NJ Turnpike Authority²
Custodial Agency**

Records Relevant to Complaint:

1. All trip tickets assigned to Klarida Papajani from February 1, 2012, to February 19, 2012.
2. All trip tickets for three (3) trucks, NJTPA #748, #778, #728, including maintenance from February 1, 2012, to February 19, 2012.
3. All three (3) decisions with all revised decisions in case against Klarida Papajani filed on February 7, 2012, and hearing on August 6, 2012

Custodian of Record: Jane Paxton, Ramon de la Cruz, Esq.

Request Received by Custodian: November 7, 2014

Response Made by Custodian: November 19, 2014; November 25, 2014

GRC Complaint Received: January 12, 2015

Background³

Request and Response:

On November 7, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 19, 2014, the seventh business day following receipt of the request,⁴ the Custodian wrote to the Complainant, requesting an extension of time to complete the request. On November 21, 2014, the Custodian responded to the request in writing, via e-mail, informing the Complainant that due to the voluminous amounts of responsive records, an extraordinary expenditure of time and effort would be required for the NJ Turnpike Authority (“Authority”) to scan and e-mail the documents. The Custodian informed the Complainant that, pursuant to N.J.S.A. 47:1A-5(c), a special service charge may be warranted to cover the expenditure of time and effort to copy and

¹ No legal representation listed on record

² No legal representation listed on record.

³ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

⁴ The agency was closed on Thursday, November 11, 2014, due to the Veterans’ Day holiday.

scan the documents (with the Complainant being charged for a staffer's time to convert the records to scanned documents and for the copies themselves). The Custodian asked how the Complainant wanted to proceed. Later that same day, the Custodian again wrote to the Complainant, explaining that the responsive records consisted of 2,110 pages, and the estimated copying cost totaled \$105.50, due at the time of pick-up, with an additional \$11.30 fee for shipping the documents totaling \$116.80.

That same day, the Complainant responded that she wished to have the records sent to her by e-mail, as she did not wish to pay the fees. She believed that if the Custodian e-mailed the documents, there was "no need for copies to be paid." The Custodian responded that same day, stating that the Authority was permitted to charge .05 cents per page to cover the copying costs, amounting to the total cost of \$105.50. Additionally, the Custodian stated that shipping, at the Authority's discounted rate, would cost an additional \$11.30, bringing the total cost to \$116.80. The Custodian informed the Complainant that payment was required in order to proceed with the OPRA request.

The Custodian additionally noted that the 2,110 pages of documents responsive to the request were not electronic records that could be provided free of charge. Rather, the documents existed in print format and would require copying and shipping, or personal pick-up. The Custodian added that the Complainant could avoid shipping costs by paying only the copying fee of \$105.50 and personally picking up the documents. The Complainant replied to this message by e-mail that same day, writing that she would "go over the papers and tell you which ones I need to get cop[ies]," and stated that she would go to the Authority's office on Monday, November 24, 2014, between 1 PM and 2 PM to review the documents.

The Custodian wrote to the Complainant on Monday, November 24, 2014, at 10:43 AM, confirming the Complainant's appointment at 1:00 PM later that day. The Complainant responded to this e-mail a few minutes later by stating "you just send me a confirmation and is late [sic] for me to change my schedule now," She then requested an appointment for the next day, Tuesday, November 25, 2014, between 12 PM and 1 PM. The Custodian responded that there was an available appointment on November 25, 2014, at 1:30 PM, to which the Complainant agreed.

On Tuesday, November 25, 2014, the Custodian sent an e-mail to explain that all documents responsive to the request were present. Documents responsive to part 1 (trip tickets) were contained in a large envelope, which further contained documents responsive to part 3 (written decisions). The box of documents for review contained the documents responsive to part 2 (trip tickets assigned to three maintenance vehicles). The Custodian asked the Complainant to tab the specific trip tickets she wanted copied and stated that the Custodian would send copies of the tabbed documents. The Custodian further noted that the Complainant could take the envelope of documents responsive to parts 1 and 3 of the request.

Denial of Access Complaint:

On December 12, 2014, the Complainant filed a Denial of Access Complaint with the

Government Records Council (“GRC”).⁵ The Complainant asserted that on November 21, 2014, she was “notified to pay” for her requested records, but on that date she refused to pay the mailing fee, instead requesting to “go pick up” the records. The Complainant alleged that when she arrived to pick up the documents, there was “no attorney.” The Complainant further claimed that the records did not contain all of the documents she requested and that when she e-mailed the Custodian regarding this, the Custodian “refuse[d] to come down.” The Complainant additionally alleged that she was ultimately “not allowed to pick up the request [be]cause [the] attorney had to review the papers again.” The Complainant stated that she has frequently had a “hard time” receiving requests on time. The Complainant further alleged that with respect to one of her requests here, the Turnpike Authority “lied,” as the answer to her request was a “simple answer.” She further alleged that the Turnpike Authority did not send cover papers regarding which requests they were responding.

The Complainant alleged that with respect to the requested maintenance records for three trucks, she was given only “20%” of the requested information, that she was given only one of the three requested February 2012 decisions against her, and that she was given only “10%” of the trip tickets used for her assignments from February 2012 to February 2014.

The Complainant made no further legal arguments regarding the denial.

Statement of Information:

On April 30, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on November 7, 2014. The Custodian certified that he responded in writing on November 19, 2014 (seven business days after receipt of the request, due to the Veteran’s Day holiday) seeking an extension to respond, due to the voluminous amount of requested records. The Custodian averred that the agency performed an “extensive search” to locate the requested records, which were off-site. The Custodian further argued that accommodations were made to enable the Complainant several options to obtain the responsive records.

The Custodian certified that the records responsive to the Complainant’s OPRA request consisted of “2000+ voluminous trip tickets and employee hearing decision” and that all responsive records were provided to the Complainant on November 25, 2014, when she came to the custodial agency’s office to review and identify which records she wished to have copied. An e-mail from the Custodian to the Complainant on November 25, 2014, indicates that one large envelope of documents contained records responsive to part 1 of the request (trip tickets assigned to Complainant from February 1, 2012, to February 19, 2014) as well as documents in response to part 3 of the request (written decisions). Additionally, a box contained documents responsive to part 2 of the request, which were trip tickets assigned to three maintenance vehicles. The Custodian requested that the Complainant review the documents in the box and tab the specific tickets she wanted copied so that the Custodian could copy and send the documents to the Complainant.

⁵ The complaint was referred to mediation on February 10, 2015. The complaint was referred back from mediation on April 22, 2015. The Complainant did not submit an amendment to the Denial of Access Complaint.

The Custodian further certified that the agency repeated the above steps on April 21, 2015, for a second visit by the Complainant. The Custodian argued that the Turnpike Authority timely responded to the Complainant's request, timely sought an extension of time, and provided several options for the requestor to receive responsive records, which ultimately were provided to the requester twice.

Additional Submissions:

The Complainant corresponded with the GRC on April 21, 2015, after returning to the Turnpike Authority to once again review the documents provided by the Custodian. Both the Complainant and Custodian exchanged correspondence earlier that day, while the Complainant was at the Turnpike Authority reviewing the prepared documents. E-mails from the Complainant allege that when she arrived, she found the request to be incomplete and that the Custodian would not come downstairs to speak the Complainant. The Complainant alleged that with respect to part 1 of the request, it was not complete and that she was given something she had already been provided. She further alleged that the documents, certified by the Custodian to be responsive to part 2 of the request, were not and that she required "computerized and written" records, particularly with regard to truck #728.

E-mails from the Custodian assert that he did not understand the Complainant's e-mails and "simply ha[d] no clue" what she was referring to, as the Turnpike Authority provided all responsive documents, "contrary to [the Complainant]'s representation."

Analysis

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request "with certain exceptions." N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

Here, the Custodian submitted a Statement of Information wherein he certified that all records responsive to the Complainant's request were presented twice to the Complainant, once in November 2014 and again in April 2015. Additional correspondence from the Complainant, sent to the GRC after the April event, asserts that Custodian and his agency have "lied" and that the documents she seeks have yet to be provided.

Accordingly, based on the insufficient and conflicting evidence in the matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. The complaint should also be referred to the Office of Administrative Law for determination of whether the Custodian or any other agency official knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that, based on the insufficient and conflicting evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. This complaint should also be referred to the Office of Administrative Law for determination of whether the Custodian or any other agency official knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prepared By: Husna Kazmir
Staff Attorney

Reviewed By: Joseph D. Glover
Executive Director

October 20, 2014